

Remarks

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

Initially, it is noted that ownership of the above-identified application has been transferred recently, and revocation and power of attorney papers will soon be made of record. In the meantime, the undersigned counsel confirms that authority to act on behalf of the new owner has been provided to the undersigned.

By the above amendments to the claims, claims 1, 3, and 4 have been amended, claims 2 and 5-18 have been cancelled without prejudice, and new claims 19-21 have been introduced. New claims 19-21 find descriptive support throughout the detailed description of the invention. Therefore, no new matter has been introduced. Claims 1, 3, 4, and 19-21 remain pending.

The objections to the Title of the Invention, the Drawings, and the Specification are overcome by above-identified Amendments to the Specification. These objections should therefore be withdrawn.

The objections to claims 1, 6, 13, 14, and 18 are overcome by the above-identified claim amendments. These objections should therefore be withdrawn.

The rejection of claims 1, 6, and 15 under 35 U.S.C. § 112 (second paragraph) for indefiniteness is rendered moot with respect to cancelled claims 6 and 15, and is overcome by the above-identified claim amendments to claim 1. This rejection should therefore be withdrawn.

The rejection of claims 6-18 under 35 U.S.C. § 101 is rendered moot by the cancellation of these claims without prejudice. This rejection should also be withdrawn.

The rejection of claims 1-18 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,212,278 to Bacon et al. (“Bacon”) is rendered moot with respect to cancelled claims 6-18 and is otherwise respectfully traversed.

Bacon teaches a system including a set top box of a similar type to that of the current invention, and Bacon also addresses the need to be able to update the operating software. However, the Bacon system relies on the transmission of a convenience flag to indicate whether or not the set top box is capable of downloading the update software at any given time. If the appropriate flag is not set, then software will not be downloaded to the device at that time; the update will instead be performed at a later date when the receiver device has the capability to do so.

Bacon fails to teach the presently claimed invention, because Bacon fails to perform the two stage process as recited in claim 1 whereby the first stage (the “controlling” step) operates in one of the standby or normal operating modes of the receiver device, and a second stage (the “installing” step) operates when the receiver device changes to the other of the standby or normal operating modes. Thus, in the current invention, the loader of the apparatus will perform a search for update software in one of the operating modes and will do this regardless of what is happening in the receiver device at that time; hence, no flag transmission of the type relied upon in Bacon is required. If update software is found, then the same will be downloaded into memory on the receiver (preferably, volatile memory, as recited in claim 19); and then, when the receiver is next changed to the other mode, the update software will be installed in the manner recited. Thus, the receiver has the update software available and there is no need for a reminder or flagging system to be set for the receiver to look for and download the software at a later time as is required by the Bacon system.

For these reasons, Bacon fails to teach or suggest the presently claimed method for updating software. Therefore, the rejection of claims 1-18 under 35 U.S.C. § 102(b) is improper and should be withdrawn.

Because new claims 19-21 depend from claim 1, which is allowable for the reasons noted above, applicant further submits that new claims 19-21 also are allowable over Bacon.

In view of all of the foregoing, applicant submits that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Dated: August 20, 2008

/Edwin V. Merkel/
Edwin V. Merkel
Registration No. 40,087

NIXON PEABODY LLP
1100 Clinton Square
Rochester, New York 14604-1792
Telephone: (585) 263-1128
Facsimile: (585) 263-1600